

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CIRIACO PUCILLO,

Plaintiff,

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**METSO PAPER, INC. AND
VALMET CONVERTING, INC.**

Defendants.

Case No. 03-CV-12359 MLW

REPLY MEMORANDUM IN SUPPORT OF
MOTION TO MODIFY SCHEDULING ORDER
TO PERMIT FILING OF DISPOSITIVE MOTIONS

Defendants Metso Paper, Inc. and Valmet Converting, Inc. respectfully submit this reply memorandum in support of their motion seeking leave to file motions for summary judgment.

Plaintiff opposes the motion arguing in essence that plaintiff needs more time to “evaluate the liability of the Defendants” and to decide whether to renew a motion, previously denied by the Court, to add additional defendants. Neither argument justifies denying defendants the right to file for summary judgment.

Rule 56, Fed. R. Civ. P., expressly grants to all defendants the right to file for summary judgment “at any time.” Fed. R. Civ. P. 56(b). The motion may seek judgment on all claims or any part thereof, including the issue of liability. Fed. R. Civ. P. 56(b) and (c). If the opposing party cannot present facts essential to the party’s opposition to the motion, Rule 56(f) expressly grants the opposing party the means to raise the issue and grants the Court the power to defer the motion pending further discovery. Fed. R. Civ. P. 56(f).

Thus, the ordinary application of Rule 56 grants defendants the right to file for judgment at any time and grants plaintiff ample protection from a premature motion. This case was filed

on October 28, 2003 and removed to this Court on November 21, 2003. Fact discovery is complete. Thus, a motion for summary judgment at this time is hardly premature.

No defendant should be required to continue to incur defense costs, especially costs relating to expert witness and Daubert motions, when the facts to support the claims against the defendants are insufficient as a matter of law. Accordingly, defendants respectfully request that the Court grant their motions for leave to file for summary judgment.

Date: August 22, 2005

Respectfully submitted,

/s/ David L. Kelleher

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CERTIFICATE OF SERVICE

I, David L. Kelleher, hereby certify that on August 22, 2005, I caused a copy of the foregoing Reply Memorandum in Support of Motion to Modify Scheduling Order to Permit Filing of Dispositive Motions, to be filed and served by the Court's electronic filing system and an additional copy served by mailing, first class, postage prepaid, directed to:

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/s/ David L. Kelleher

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